

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *et al.*,
ex rel. MICHAEL BAIN, *et al.*,

Plaintiffs,

v.

SMITH & NEPHEW, INC., *et al.*,

Defendants.

19 Civ. 01010 (AT)

**NOTICE OF DECISION TO DECLINE
INTERVENTION**

The States of California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Vermont, Virginia and Washington, (collectively the “Plaintiff States”) hereby respectfully notify the Court of their decision not to intervene in the above-referenced *qui tam* action.

Although the Plaintiff States decline to intervene in this action, pursuant to their respective False Claims Acts or analogous state laws the Plaintiff States: (1) reserve their right to intervene at a later date upon a showing of good cause, *see, e.g.*, N.Y. Fin. L. § 190(5)(a); (2) with the exception of Maryland, reserve their rights to seek the dismissal of the relators’ action or claim pursuant to the Plaintiff States’ respective false claims acts (*e.g.*, N.Y. Fin. L. § 190(5)(b)(i); Cal. Gov’t Code § 12652(e)(2)(A)); (3) preserve their ability to request a stay of discovery pursuant to the Plaintiff States’ respective false claims acts (*e.g.*, N.Y. Fin. L. § 190(5)(d); Cal. Gov’t Code § 12652(h)); (4)

respectfully request that all pleadings filed in this action, and notices of appeal, be served upon counsel for the Plaintiff States, *see, e.g.*, N.Y. Fin. L. § 190(2)(f); (5) respectfully request that the Court direct the relators' counsel to serve upon the Plaintiff States any orders issued by the Court, *see, e.g., id.*; (6) reserve their right to order any deposition transcripts in this action; and (7) request that if the relators or the defendants propose that any claims be dismissed, settled, or otherwise discontinued, the Court require that such litigant(s) solicit the written consent of the Plaintiff States before applying to the Court for such relief, *see, e.g.*, N.Y. Fin. L. § 190(5)(a).

With respect to Maryland, the Maryland False Health Claims Act provides that, if Maryland “does not elect to intervene and proceed with the action . . . before unsealing the complaint, the court shall dismiss the action.” Md. Code Ann., Health Gen. § 2-604(a)(7). Accordingly, Maryland requests that all claims asserted on behalf of Maryland be dismissed without prejudice.

With this notice, the United States is filing a proposed order providing for this relief

for the plaintiff states.

Dated: New York, New York
August 3, 2021

Respectfully submitted,

LETITIA JAMES
Attorney General for the
State of New York

By: *Anthony I. Giacobbe, Jr.*
ANTHONY I. GIACOBBE, JR.

Special Assistant Attorney General
Office of the New York State Attorney General
Medicaid Fraud Control Unit
28 Liberty Street, 13th floor
New York, NY 10005
Telephone: 212-417-4990
E-mail: Anthony.giacobbe@ag.ny.gov
On behalf of the Plaintiff States